

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division 2003 MAY -6 P 4:12

UNITED STATES OF AMERICA)

v.)

ZACARIAS MOUSSAOUI)

UNDER SEAL

Criminal No. 01-455-A

**NOTICE AND MOTION FOR VIDEOTAPED RULE 15
DEPOSITION OF LUIS MARTINEZ-FLORES¹**

COMES NOW Standby counsel for defendant Zacarias Moussaoui, and pursuant to Rule 15 of the Federal Rules of Criminal Procedure, request that the Court order a videotaped deposition of Luis Martinez-Flores. In support of this motion standby counsel state as follows:

1. Mr. Martinez-Flores has relevant and admissible testimony that may be used in either the guilt or penalty phase of this capital prosecution.

Mr. Martinez Flores was convicted in this Court of several crimes related to his interaction in this district with at least two of the persons who allegedly hijacked planes on September 11, 2001. A true copy of the Plea Agreement between the United States and Mr. Martinez-Flores is attached hereto as Exhibit 1 for the convenience of the Court. That

¹ Pursuant to the Court's August 22, 2002 order, a copy of this motion was provided to Mr. Moussaoui for his review before the motion was filed.

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the Court. That plea agreement, and the statement of facts attached thereto, demonstrate the materiality of the testimony of the witness.

2. It has come to the attention of standby counsel that Mr. Martinez-Flores is now in the custody of the United States and that he is facing deportation to an unknown country in Central America. Upon information and belief, the witness will be deported to El Salvador.
3. Mr. Martinez-Flores is currently being held at the Oakdale Federal Detention Facility in Oakdale, Louisiana. A deportation hearing is scheduled for April 22, 2003, with a scheduled deportation date of on or about May 19, 2003. His INS number is 74631872.
4. Given the fact that there is no current trial date scheduled in this matter, it is submitted that it would not be in the interests of justice to detain the witness until such a trial is scheduled. To the contrary, it would be preferable to perpetuate this testimony, which includes key details about the interactions between this witness and at least two of the September 11 hijackers, and then deport the witness.
5. It is also requested, pursuant to Fed. R. Crim. Pro. 15(d) , that the deposition take place in this court so that the parties may be present without the costs of travel expenses for the government and standby

counsel. In addition, this procedure allows for the attendance and participation of the *pro se* defendant.

WHEREFORE, standby counsel request that the instant motion be granted and that the Rule 15 deposition of Luis Martinez-Flores be ordered and that such deposition take place at the earliest convenient date to the parties hereto.

Respectfully submitted,

STANDBY COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Rule 15 deposition of Luis Martinez-Flores was served upon AUSA Robert A. Spencer, AUSA David Novak and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314, by placing a copy by hand in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia, Luis Martinez-Flores, c/o Warden, Oakdale Federal Detention Facility, P.O. Box 5060, Oakdale, Louisiana 71463, via first class mail and, UPON APPROVAL FROM THE COURT SECURITY OFFICER, via first class mail to Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, Virginia 22314 this 6th day of May 2003.

18/
Edward B. MacMahon

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Number 01-412-A
)	
LUIS A. MARTINEZ-FLORES,)	
)	
Defendant)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and John T. Morton, Assistant United States Attorney, and the defendant, Luis A. Martinez-Flores, and the defendant's counsel, Jeffrey D. Zimmerman, pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, Luis A. Martinez-Flores, agrees to plead guilty to the pending indictment. The pending indictment charges the defendant with identification document fraud, in violation of Title 18, United States Code, Section 2 and Section 1028(a)(1), (b)(1)(A)(ii), and (c)(3)(A). The maximum penalty for this offense is a term of fifteen years of imprisonment, a fine of \$250,000, a special assessment, and three years of supervised release. The defendant is aware that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

4. The parties agree that the offense to which the defendant is pleading guilty involved the unauthorized and unlawful use of a means of identification—in this case a Virginia address that belonged to someone else at the time of the offense—to produce another means of identification. As a result, the parties further agree that the six level enhancement under §2B1.1(b)(9)(C) of the United States Sentencing Guidelines applies to the defendant's case. The

parties also agree that the defendant's conduct during the investigation of this case resulted in a significant disruption of a governmental function. As a result, the parties further agree that the defendant should receive an additional two level upward departure under §5K2.7. The parties have settled on a two level upward departure under §5K2.7 because the defendant's disruptive conduct, while significant and serious, was not intended to thwart the government's investigation of the events of September 11, 2001. Both parties specifically understand, however, that the agreements under this paragraph are not binding on the Court or the probation office and that the agreements serve only as recommendations to the Court.

5. The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in, the indictment or statement of facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant represents to the Court that the defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, the defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be

conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and the defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

7. The accompanying statement of facts signed by the defendant is hereby incorporated into this plea agreement. The defendant adopts the statement of facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

8. The defendant acknowledges that the defendant is removable from the United States and agrees not to contest any removal proceedings brought against the defendant by the Immigration and Naturalization Service (INS). If the INS files a Notice to Appear or other administrative charging document against the defendant, the defendant agrees to request an expedited removal hearing and to consent to removal. The defendant acknowledges that by consenting to removal, the defendant will be immediately removed from the United States upon the completion of any period of incarceration. The defendant knowingly waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this removal.

9. The defendant agrees to waive the defendant's rights to any and all forms of relief from removal, deportation, or exclusion under the Immigration and Nationality Act (as amended) and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief: (a) voluntary departure; (b) asylum; (c) cancellation of removal; (d) withholding or suspension of deportation; and (e) adjustment of status. In addition, the defendant agrees to waive the defendant's rights to relief from removal under Article 3 of the Convention Against Torture.

10. The defendant understands that any application for relief from removal, deportation, or exclusion the defendant filed prior to the completion of this plea agreement shall be deemed abandoned. The defendant further understands and agrees that the filing of any applications for

relief from removal, deportation, or exclusion, either written or oral, or the prosecution of any pending applications, before any federal court, the Board of Immigration Appeals, an immigration judge, or the INS, shall breach this plea agreement.

11. The defendant agrees to assist the INS in the execution of the defendant's removal. Specifically, the defendant agrees to assist the INS in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that the defendant's failure or refusal to assist the INS in the execution of the defendant's removal shall breach this plea agreement and may subject the defendant to criminal penalties under Title 8, United States Code, Section 1253.

12. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

13. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

14. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the

plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

15. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

16. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

Luis A. Martinez-Flores
Defendant

17. Defense Counsel's Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Jeffrey D. Zimmerman
Counsel to the Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
John T. Morton
Assistant United States Attorney

APPROVED:

Justin Williams
Assistant United States Attorney
Chief, Criminal Division

Date: _____

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Number 01-412-A
)	
LUIS A. MARTINEZ-FLORES,)	
)	
Defendant)	

STATEMENT OF FACTS

The United States and the defendant, Luis A. Martinez-Flores, agree that had this matter proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

1. At all times material to this case, the defendant was a citizen and national of El Salvador living in the United States unlawfully. His native tongue is Spanish, although he speaks and understands some English.
2. To obtain a Virginia driver's license or identification card, an applicant must ordinarily present the Virginia Department of Motor Vehicles (DMV) proof of identity and Virginia residence. The DMV requires two official identification documents as proof of identity and one official or business document as proof of Virginia residence. Prior to September 21, 2001, however, applicants lacking the required documentary proof of identity and Virginia residence could complete and submit DMV forms DL6 and DL51 in lieu of the required documents.
3. DMV form DL6 is an identity affidavit. Prior to September 21, 2001, the DMV would accept a properly completed DL6 form in lieu of one of the two identification documents

required to apply for a license or identification card. The form requires the applicant to provide and to swear to his name, address, and basic biographic information. The form further requires the sworn, notarized certification of an attorney. Through the certification, the attorney swears that he personally knows the applicant and has verified the applicant's identity by reviewing an identity document presented by the applicant. This certification must be made in the presence of a notary public, and the notary must sign and date the form as well.

4. DMV form DL51 is a residency certification. Prior to September 21, 2001, the DMV would accept a properly completed DL51 form in lieu of documentary proof of Virginia residence. The form requires the applicant to provide and to swear to his name and to his place and length of Virginia residence. The form further requires the sworn, notarized certification of a Virginia resident. Through the certification, the Virginia resident swears that he is personally acquainted with the applicant and that the applicant lives at the Virginia address listed on the form. This certification must be made in the presence of a notary public, and the notary must sign and date the form as well.

5. Virginia driver's licenses and Virginia identification cards are identification documents made and issued by and under the authority of the Commonwealth of Virginia. Submitting a false DL6 or DL51 form to the DMV in support of an application for a driver's license or identification card causes the unlawful production of such a Virginia driver's license or identification card. The production of Virginia driver's licenses and identification cards is in and affects interstate commerce.

6. On September 11, 2001, four commercial airliners were hijacked by foreign terrorists after the flights left airports in Boston, Newark, and Arlington, Virginia. Two of these flights,

American Airlines flight 11 and United Airlines flight 175, were subsequently flown into the twin towers of the World Trade Center in New York. Another, American Airlines flight 77, was flown into the Pentagon in Arlington, Virginia. The fourth flight, United Airlines flight 93, crashed into a field outside of Shanksville, Pennsylvania. All of the passengers and crew members on these four flights were killed. Several thousand people who were either in the World Trade Center or the Pentagon also perished.

7. Hani Hanjour (Hanjour) and Khalid Almihdhar (Almihdhar) were two of the hijackers of American Airlines flight 77.

8. On or about the evening of August 1, 2001, the defendant was seeking day labor from passersby in a parking lot at a 7-11 store in Falls Church, Virginia. On that same date, Hanjour and Almihdhar drove a van with out-of-state license plates into the same parking lot while the defendant was there. Once in the lot, Hanjour and Almihdhar told the day laborers who approached their van that they needed someone to certify that they were Virginia residents on a DMV form. When the first two laborers who approached Hanjour and Almihdhar refused to help the men, the defendant came forward and agreed to help Hanjour and Almihdhar in return for a cash payment of \$100.

9. Once the matter was agreed, the defendant got into Hanjour and Almihdhar's van and directed them to the Springfield DMV office in Springfield, Virginia. There, the defendant helped both Hanjour and Almihdhar to complete a DL51 form using the address 5319 Leesburg Pike, #8, Falls Church, Virginia. This address did not belong to either Hanjour or Almihdhar, but was rather the address that appeared on the defendant's Virginia identification card. The defendant no longer lived at the address, but had in the past. In addition to lending both men his

former address, the defendant certified on both DL51 forms that the applicants, Hanjour and Almihdhar, lived at 5319 Leesburg Pike, #8, Falls Church, Virginia, when in fact they did not. When the defendant executed these certifications he listed his address as 5319 Leesburg Pike, #8, Falls Church, Virginia, as well.

10. Once they had completed the DL51 forms, the defendant, Hanjour, and Almihdhar swore that the information on the forms was correct before a DMV clerk. Hanjour and Almihdhar then submitted the forms to the DMV in support of their respective applications for a Virginia identification card. A few moments later, DMV clerks issued both Hanjour and Almihdhar Virginia identification cards.

11. Once Hanjour and Almihdhar had received their identification cards, the defendant, Hanjour, and Almihdhar got back in the van and returned to the 7-11 store. Almihdhar then obtained \$100 in cash from an automated teller machine inside the 7-11 store and gave the money to the defendant. At this point, Hanjour and Almihdhar left; the defendant remained in the parking lot for a period and then went home. The defendant had no further contact with either Hanjour or Almihdhar.

12. When the defendant certified Hanjour and Almihdhar's Virginia residence on the DL51 forms, he knew that Hanjour and Almihdhar did not live at the Virginia address listed as their address on the forms. He further knew that neither man lived in Virginia and that he was assisting them to obtain Virginia identification cards from the DMV by fraud. He also knew that Hanjour and Almihdhar wanted him to certify falsely that they lived in Virginia so that they could obtain Virginia identification cards to which they were not legally entitled.

13. On September 12, 2001, agents of the Federal Bureau of Investigation (FBI) located the defendant and began a series of consensual interviews with him. When first interviewed, the defendant intentionally misled the agents about his involvement with Hanjour and Almihdhar. Specifically, the defendant led agents to believe that he had seen Hanjour, Almihdhar, and other hijackers on multiple occasions. He told agents that he had developed a close personal relationship with Hanjour in particular and that he and Hanjour had lengthy discussions with each other over the course of several meetings. According to the defendant, Hanjour was very interested in Federal Reserve buildings, stadiums, and other large structures in major cities along the eastern seaboard. Based on these conversations, the defendant believed that a further attack was possible and that armored cars might be involved.

14. After several interviews, FBI agents and federal prosecutors confronted the defendant with numerous inconsistencies in his story. Faced with the inconsistencies, the defendant admitted that much of what he had earlier told agents was untrue. Specifically, he admitted that his only contact with Hanjour and Almihdhar was on August 1, 2001, at the 7-11 store in Falls Church, Virginia, and the DMV office in Springfield, Virginia (as described above).

15. The defendant acknowledges that his initial misrepresentations to the FBI caused a serious disruption in the operations of the Department of Justice and its subordinate components, including the FBI and the United States Attorney's Office for the Eastern District of Virginia. In particular, the defendant acknowledges that his misrepresentations caused agents, prosecutors, and senior management officials within the Department of Justice to devote considerable time and energy to the investigation of his claims and to the preparation of an appropriate response. The defendant further acknowledges that his misrepresentations caused the Department of Justice

to issue warnings to law enforcement officials in several eastern cities. These warnings, in turn, caused the officials who received them to spend time preparing a response.

16. On September 13, 2001, the defendant gave the FBI permission to search his apartment at 3300 Culmore Court, Apartment #5, in Falls Church, Virginia. That same day, FBI agents searched the defendant's apartment and found an Immigration and Naturalization Service (INS) alien registration receipt card, officially known as an INS form I-551 and informally known as a "green card." This card bore the defendant's photograph and name and was found in a closet the defendant told agents was his. Later examination by the INS revealed that this card was counterfeit.

17. The defendant acknowledges that he obtained this card knowing that it was counterfeit and that his possession of this card constitutes a violation of 18 U.S.C. § 1546(a).

18. Falls Church and Springfield, Virginia, are within the Eastern District of Virginia.

19. This statement of facts includes those facts necessary to support the plea agreement between the defendant and the government. It does not include each and every fact known to the defendant or the government, and it is not intended to be a full enumeration of all of the facts surrounding the defendant's case.

20. The actions of the defendant as recounted above were in all respects knowing and deliberate, and were not committed by mistake, accident, or other innocent reason.

Respectfully submitted,

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: _____
John T. Morton
Assistant United States Attorney

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, Luis A. Martinez-Flores, and the United States, I hereby stipulate that the above statement of facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date: _____

Luis A. Martinez-Flores
Defendant

Defense Counsel's Signature

I am Luis A. Martinez-Flores's attorney. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: _____

Jeffrey D. Zimmerman
Counsel to the Defendant